

# Grande Communications Networks, LLC

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Request for Review of Decision  
of the Universal Service Administrator

WC Docket No. 06-122

June 1, 2011

# About Grande Communications

- Formerly Grande Communications Networks, Inc.
- Two subsidiaries – Grande Communications ClearSource, Inc. (“ClearSource”) and Denton Telecom Partners 1, L.P. (“Denton”)
- Competitive telecommunications carriers operating in Texas
- Provides telephone, cable, and Internet services to retail end users
- During the audit period, also provided wholesale telecommunications services to carriers and information service providers
- Utilizes combination of Grande’s own network and leased facilities

# Grande Request for Review of USAC Decision

- USAC audit of Grande, ClearSource and Denton (collectively “Grande”) initiated February 2008 covering CY 2004-2006
- Final audit decision released October 2009
  - Resulted in new USF contribution obligation of several million dollars
- 3 Issues on Appeal:
  - Treatment of Grande’s intrastate Customer Line Charge
  - Reporting of Grande’s broadband Internet service revenues
  - Reclassification Grande’s reseller revenues as end user revenues

# Issue 1: Grande's Intrastate Charges

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- USAC erroneously seeks to reclassify Grande's end user local service charges as federal, interstate SLC revenues subject to USF assessment

# Grande Accurately Classified and Reported its CLC as Intrastate Revenue

- Grande Customer Line Charge (“CLC”) – the per-line, end user charge is a component of local exchange service charges
  - Grande always treated as intrastate, including for assessment of Texas USF contribution obligations
- For the audit period, Grande did not have a federally tariffed SLC
- Grande reported its CLC in accordance with Form 499-A Instructions
  - Reported state CLC revenues as monthly local service revenue (line 404.1)
  - Reported \$0 federally tariffed SLC revenues (line 405)

# Grande Accurately Classified and Reported its CLC as Intrastate Revenue

- CLECs have latitude in assessing local service charges to end users.
  - FCC rules do not require CLECs to assess a federal SLC
    - FCC SLC rule section 69.104 applies only to ILECs
    - Grande did not have a federally-tariffed interstate SLC
- FCC acknowledges all LECs can assess intrastate SLC
  - USAC agreed: “USAC agrees with the Carrier that any state SLC revenues are to be reported as intrastate revenues on its Form 499-A.”

## Issue 2: Reporting of Grande's Internet Access Service Revenues

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- USAC incorrectly requires Grande to identify and report revenues attributable to the transmission component of the Internet service for the period prior to August 2006
- USAC erroneously seeks to reclassify all of the revenues from Grande's broadband Internet access service - not just those from transmission component - as telecommunications revenues subject to USF.

# Grande's Broadband Internet Access Service Revenues Were Not Subject to USF Assessments

- Grande's DSL-based Internet access service ("DSL-Internet Service") is an information service
  - never offered or included a separate transmission component
  - always offered and classified as an information service
  - equivalent to the FCC's category of wireline broadband Internet access service



# Grande's Broadband Internet Access Service Revenues Were Not Subject to USF Assessments

- *Computer Inquiry Orders* - Unclear whether CLECs were ever obligated to offer separate transmission component to other carriers; no obligation to offer to end users
- *Wireline Broadband Order* – Does not alter *status quo* carrier reporting practices
  - Statement that “facilities-based providers of wireline broadband Internet access services must continue to contribute [to the USF]” must be read in context.
    - Providers offering wireline broadband service as single, integrated service not required to *begin* separately reporting transmission component of service
    - Under existing rules at that time only broadband transmission providers required to contribute to USF

# Grande's Broadband Internet Access Service Revenues were not Subject to USF Assessments

- *Wireline Broadband Order* did not retroactively change Grande's pre-August 2006 DSL Internet Service offering or reporting requirements.
- Even if Grande was required to report transmission component revenues, pre-August 2006, USAC mistakenly reclassified *all* DSL Internet Service revenues as USF-assessable.

## Issue 3: Grande's Identification and Reporting of Revenue from Resellers

- USAC imposes an unrealistic standard for classification of reseller revenues and consequently erroneously seeks to reclassify Grande's reseller revenues
- USAC violates section 254 by knowingly double collecting USF from the reseller and the wholesale provider

# Grande Reasonably and Accurately Classified its Reseller Revenues

- Grande provides wholesale services to telecommunications providers and conducts thorough review of provider status
  - Services sold through dedicated wholesale team
  - Individually-negotiated agreements specifically designed for resale and contain resale-only provisions
  - Services require carrier-grade arrangements at carrier POP or collocation
  - Services not available to end user customers
  - Grande collects tax exemption certificate and verifies companies are telecommunications carriers

# Grande Reasonably and Accurately Classified its Reseller Revenues

- FCC Form 499-A Instructions are non-binding guidelines
- FCC stated compliance with 499-A Instructions not required to meet “reasonable expectation” standard that customer will contribute to USF
- FCC confirmed filers may classify reseller revenues based on “other reliable proof” of a customer’s reseller status
- USAC’s interpretation of reseller classification requirements imposes unreasonably high burden on wholesale carriers

# Grande Reasonably and Accurately Classified its Reseller Revenues

- Grande produced “other reliable proof” in the form of contemporaneous USAC reports that the reseller filed Form 499-Qs
  - USAC evidence establishes reasonable expectation that the reseller is being assessed USF directly
- Grande’s alternative evidence is sufficient. Combination of
  - Sales of carrier services, through a dedicated carrier team,
  - Sworn tax exemption certificates from the carrier customer, AND
  - Evidence that Grande sales alone exceed the *de minimis* threshold

demonstrates that the customer (1) incorporates purchased services into its own telecommunications services and (2) can reasonably be expected to contribute to federal USF.

# USAC is Violating Section 254 by Double Recovering USF Contributions

- USAC makes wholesale carrier the guarantor of customer compliance with FCC standards and results in double recovery of USF contributions
- In the case of one reseller, USAC simultaneously classified Grande's revenue from that reseller as "end user" revenue AND ordered the reseller to contribute directly as a carrier on the same revenues
- Section 254 prohibits the double recovery of USF from both the wholesale provider and the reseller

# Summary

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- Grande had no federally tariffed interstate SLC and accurately classified its state CLC as intrastate revenues
- Grande's broadband Internet access service did not contain a separate transmission component and Grande was not required to separately identify or report revenues from the transmission component of the service either before or after August 2006
- Grande relied on "other reliable proof" of its customers' reseller statuses and accurately identified and reported its revenues from resellers